

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE)

MEMORANDUM DECISION

APPLICATION NOS. 389 and 390)

The above numbered exchange applications were filed to exchange a total of 69.52 ac.-ft. of water as evidenced by shares of stock in the Kents Lake Reservoir Company and the Mammoth Canal and Irrigation Company. The water diverted under these shares could be stored in Three Creeks Reservoir and/or Kent's Lake and has been used to irrigate acreage adjacent to the Beaver River flood plain near the city of Beaver, Utah. The exchange applications proposed that this water could now be pumped from a well or wells and springs in Section 2, T29S, R5W, SLBM, and in lieu of the water diverted from wells or springs a like amount could be released from said reservoirs to satisfy lower users. The exchange applications were received December 14, 1970, by this office and were advertised in the Beaver Press during January and February, 1971. Protests were received by the State Engineer beginning February 16, 1971, and a hearing concerning this matter was held in the Beaver County Courthouse on April 27, 1971.

In summary, the protest issues are:

1. The lower companies and water user's claim that the water would not be available to the applicant and are concerned that some of the lower water rights would be impaired.
2. That the diversion of this water above the company's described points of diversion would cause a problem over the internal distribution of the water and undue expense concerning the revision and change of diversion and proportional dividers. Reducing the allowable stream by this amount would increase the loss of water by evaporation and seepage.
3. They claim that the applicant cannot change a right that was normally used for irrigation purposes between April 1 and October 31 to a year around (January 1 to December 31) use for the purposes described.
4. The U. S. Forest Service claims that by using the springs or by developing wells in this upper drainage that it would affect the Riparian vegetation around these sources and that wastes and untreated water from this development would contaminate culinary water supplies used within various campgrounds and the city of Beaver below.

5. Wildlife groups expressed the danger of polluting the environment and streams because of the proposed development on the head waters of the Beaver River.

It is the opinion of the State Engineer that the exchanges can be accomplished with the necessary operational requirements and a stipulation. Reference is made to Section 73-3-20, Utah Code Annotated, 1953, "... Any person having stored his appropriated water in a reservoir for a beneficial purpose shall be permitted to withdraw the same at such times and in such quantities as his necessities may require; provided, such withdrawal does not interfere with the rights of others."

It is, therefore, ordered and Exchange Application Nos. 389 and 390 are hereby APPROVED, subject to the following conditions:

1. The water must be available to the applicant through the shares in Kent's Lake Reservoir Company and Mammoth Canal and Irrigation Company before any water can be diverted from the springs or wells.
2. The water diverted into the applicants system must be metered and recorded with said facilities available to the Beaver River Water Commissioner at all times.
3. The water to be released to the lower users in exchange for the water used by the applicant shall be released by the companies under the direction of the Beaver River Commissioner.
4. The applicant is encouraged to cooperate with the irrigation companies in making these exchanges and also to correct any distribution weirs or controls within the companies systems.
5. The applicant is instructed to comply with all the regulations and conditions placed upon his project by the Utah State Department of Health, Division of Environmental Control, concerning waste disposal, water supply, and other sanitary measures; and to make the development with the least possible impact on the environment of the area.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this Sixth day of July, 1971.

BEFORE THE STATE ENGINEER OF THE STATE OF UTAH

IN THE MATTER OF EXCHANGE APPLI-
CATION NUMBER 2088 (77 Area)

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) MEMORANDUM DECISION

Exchange Application Number 2088 (77 Area) was filed by Conrad H. Koning (30% interest) and Mt. Holly Homeowner's Association, Inc. (70% interest) to exchange 364 acre-feet of water for uses at a recreational development near Beaver, Utah. The water has been used for irrigation purposes through the Kent's Lake Reservoir Company and storage facilities in Kent's Lake Reservoir and Three Creeks Reservoir. It is now proposed this same amount of water be released from either one or both reservoirs to satisfy replacement requirements of the Beaver River and that the applicants be allowed to divert from an existing well, five specified springs, and one diversion point on the North Fork of Three Creeks, with the water from these sources used for various purposes at the Mt. Holly recreation area. The application was advertised in the Beaver Press from July 15th through July 29, 1982 and protests were filed by the following: Lindsay Ditch Co., Second Northwest Canal and Irrigation Co., Mammoth Canal Co., Kent's Lake Reservoir Co., Joseph Ditch Co., Indian Dam Ditch Co., Second South Bench Irrigation and Reservoir Co., Willis Canal Co., Benson, Allred and Smith Ditch Co., Second South Field Ditch Co., Rocky Ford Irrigation Co., and Utah Power and Light Company.

A hearing was held in Beaver, Utah on November 12, 1982. The applicant, represented by Edward Clyde, contended that the water is needed for the recreational and seasonal living project at Mt. Holly. Their studies conclude that a high percentage of the water used will be recovered by return flow into the Beaver River system and that the net loss to the system will be minimal. The irrigation companies objected to the development of water outside of the company's boundaries for several reasons - diminution of water supplies to their stockholders, physical changes at divider or splits not accomplished by the applicant, and a question on the amount of water duty placed on each share of stock in the company. They further contended that the water will not be available under the storage class of water right on sufficient number of years to allow the applicant a firm source of water supply. It is further questioned if the land normally supplied by the irrigation water will be retired as would be necessary under this type of exchange. Utah Power and Light Company is concerned that the development of 364 acre-feet of water will have an adverse effect on the supply of water available to their hydro-electric power plants located below the Mt. Holly area.

The above points were discussed in further detail, and it was concluded that most of the problems were of a distribution nature and would require a systematic follow-through by the Division of Water Rights and the River Commissioner. The question concerning the duty of water per share of stock caused further study by the State

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Engineer and his staff, and the following conclusions have been made:

1. The number of out-standing shares of stock in the Kent's Lake Reservoir Co. has been set at 2906 shares.
2. The sole Class B Water Right to Kent's Lake Reservoir Co. is based on a decreed storage of 1660 acre-feet. 830 acre-feet was transferred to Three Creeks Reservoir and 830 acre-feet remained in Kent's Lake. Out of the 830 acre-feet in Kent's Lake, Beaver City Corporation owns 200 acre-feet, leaving a total of 1460 acre-feet to the Kent's Lake Reservoir Company for distribution. There is an additional 1193 acre-feet under a 1940 priority (high water) that is owned by the company but is not transferrable under this type of exchange, since the water is rarely available.
3. Based on the 99.5 shares represented in the subject exchange and the 1460 acre-feet of storage right it is concluded that the applicant could have a proportionate share of 49.99 acre-feet of water depending on the availability under Class B storage right.

It is the opinion of the State Engineer that this exchange application can be accomplished with the necessary operational requirements.

In determining the quantity of water affected by this exchange the State Engineer does not intend to adjudicate the right but does quantify the exchange for the purposes of regulating the diversion and distributing the water. During such times that water is available under the high water storage right, the stockholder may have access to his proportionate share, but the water can not be used for this exchange since it will not be available in a sufficient number of years as to constitute a reliable source for a community water supply.

It is, therefore, ordered and Exchange Application Number 2088 (77 Area) is hereby APPROVED, subject to the following conditions:

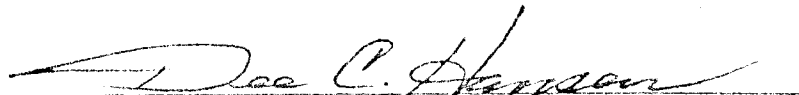
1. The application shall be amended by reducing the 364 acre-feet allowed under the 99.5 shares to the amount of 49.99 acre-feet as described above.
2. The water must be available in storage in Three Creeks Reservoir through shares in the Kent's Lake Reservoir Company before any water can be diverted from the existing well, springs, or North Fork of Three Creeks. All

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2. releases made by the Kent's Lake Reservoir Company shall be under the direction of the Beaver River Water Commissioner.
3. The water diverted into the applicant's system must be metered by the applicant and recorded by the water commissioner, and the metering facilities must be available to the Beaver River Water Commissioner at all times.
4. The applicant is instructed to cooperate with the Kent's Lake Reservoir Company and irrigation companies in correcting any distribution weirs, dividers, or controls where charges were made because of the transfer or exchange under this application.
5. The applicant is instructed to comply with all the regulations and conditions placed upon his project by the Utah State Department of Health, Division of Environmental Control, concerning waste disposal, water supply, and other sanitary measures; and to make the development with the least possible impact on the environment of the area.

This decision is subject to the provisions of Section 73-3-14, Utah Code Annotated, 1953, which provides for plenary review by the filing of a civil action in the appropriate district court within sixty days from the date hereof.

Dated this 13th day of February, 1983.


Dee C. Hansen, P.E., State Engineer

DCH:SG:slm

Mailed a copy of the foregoing Memorandum Decision this 18th day of February, 1983, to:

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Salt Lake City, Utah 84103

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Salt Lake City, Utah 84116

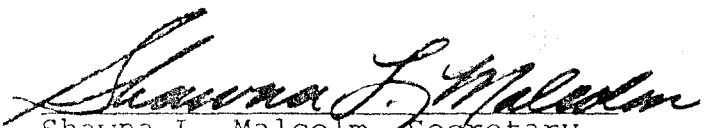
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Rocky Ford Irrigation Co.
c/o Ronald J. Wunderlich
P.O. Box 842
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By:


Shawna L. Malcolm, Secretary